



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 466

IN THE MATTER OF DOMINIC DIVIRGILIO

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Dominic DiVirgilio (DiVirgilio) pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268A, §4(j).

On April 13, 1992, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into alleged violations of G.L. c. 268A, by DiVirgilio. The Commission has concluded its inquiry and, on April 13, 1993, by a unanimous vote, found reasonable cause to believe that DiVirgilio violated G.L. c. 268A, §§23(b)(2) and 23(b)(3).

The Commission and DiVirgilio now agree to the following findings of fact and conclusions of law:

I

1. DiVirgilio was, during the time relevant here, the Commissioner of the Dedham Department of Public Works. As such, DiVirgilio was a municipal employee as that term is defined in G.L. c. 268A, §1.

2. In November 1990, DiVirgilio partially prepared, approved and submitted through channels for payment an \$825 invoice from John's Autobody. The November 14, 1990 invoice stated that John's Autobody repaired the rear quarter panels and store boxes on DPW truck #8 (a Ford utility vehicle used by the mechanics). In accordance with the invoice and a payment voucher signed by DiVirgilio, the Town of Dedham paid John's Autobody \$825.

3. John's Autobody performed no work to DPW truck #8. In a February 1990 interview with Commission staff, DiVirgilio asserted that he mistakenly filled out the invoice, and that the work was actually done to DPW truck #9 (the sewer department's flush truck). John's Autobody, however, performed no work to truck #9.

4. General laws c. 268A, §23(b)(2) prohibits a municipal employee from knowingly, or with reason to know, using his official position to secure for others unwarranted privileges of substantial value. By securing for John's Autobody \$825 for work to a DPW vehicle that had not been performed, DiVirgilio violated G.L. c. 268A, §23(b)(2).

II

5. Since 1984, DiVirgilio has exclusively hired John's Autobody to perform autobody repairs to DPW trucks. DiVirgilio has never sought price comparisons from other shops for this work. In calendar year 1989, John's Autobody received \$4,844.00 from the Town of Dedham for the repair of six DPW vehicles. In calendar year 1990, John's Autobody received \$3,298.30 from the Town of Dedham for the repair of seven DPW vehicles. Prior to John's receiving payment, DiVirgilio reviewed each of its invoices and approved them for payment by endorsing a payment voucher.

6. In July 1990, John's Autobody restored a 1969 Ford Galaxy owned by DiVirgilio. The value of the work

has been estimated to be between \$1,500 - \$2,500. DiVirgilio states he paid \$1,500 cash to John's Autobody for the work. Neither DiVirgilio, nor John's Autobody, possesses a contemporaneously produced written document, such as a receipt or an invoice, that substantiates the \$1,500 payment. Mr. DiVirgilio's credit union account, however, shows a \$1,000 withdrawal on July 17, 1990 and John's Autobody's bank records indicate a \$1,000 cash deposit on July 18, 1990.

7. General Laws c. 268A, §23(b)(3) prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties. The Commission has consistently interpreted §23(b)(3) as forbidding a public official from engaging in private dealings with individuals whom they officially regulate. See, e.g. *In re Pezzella*, 1991 SEC 523; *In re Keverian*, 1990 SEC 460; *In re Garvey*, 1990 SEC 478. Such private dealings create the appearance that the government vendor will give the regulating official private services (here, discounted autobody work) it would not otherwise provide, and that the vendor will receive preferential treatment (here, DPW autobody business) from the official. Thus, by having John's Autobody restore his Ford Galaxy, DiVirgilio violated §23(b)(3).

III

8. Since 1984, DiVirgilio has purchased diesel fuel for the DPW exclusively from the Prevett Oil Company. DiVirgilio has never placed the DPW's diesel fuel business out to competitive bid, or ever sought price comparisons from other fuel suppliers. The DPW purchased \$9,892.08 worth of fuel and services from Prevett Oil in FY 1990, \$8,092.56 in FY 1991, and \$6,522.10 in 1992.

9. The owner of Prevett Oil, Anthony Prevett, and DiVirgilio are former classmates. They belong to the same social organization and have vacationed together at Mr. Prevett's Florida home.

10. Chapter 5 of the Dedham town by-law requires all town purchases exceeding \$4,000 to be awarded pursuant to a written bid following an advertisement in a local newspaper.

11. As discussed earlier, §23(b)(2) prohibits a municipal official from using his official position to secure for another an unwarranted privilege of substantial value. By purchasing diesel fuel totalling over \$25,000 over a three year period from a friend's company in contravention of competitive bid laws, DiVirgilio violated §23(b)(2).

IV

12. In December 1991, DiVirgilio allowed the Struzziery Construction Company to use the DPW cement mixer on a private job it was performing in the Riverdale section of Dedham. The cement mixer remained in the Struzziery Construction Company's possession until February 1993. The construction company paid no rental fee to the DPW.

13. The DPW purchased the cement mixer from the Parker - Danner Company for \$1,700 in 1984. The Parker - Danner Company currently rents a similar model for \$255 per week, or \$550 per month.

14. By allocating public resources for the private use of the Struzziery Construction Company, DiVirgilio used his official position to secure for that company an unwarranted privilege of substantial value in violation of §23(b)(2).

In view of the foregoing violations of G.L. c. 268A by DiVirgilio, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed by DiVirgilio:

(1) that DiVirgilio pay to the Commission the sum of \$2,000 as a civil penalty for violating §23(b)(2) by knowingly, or with reason to know, using his official position to secure for John's Autobody an unwarranted privilege of substantial value, to wit, an \$825 payment for work it did not perform; and

(2) that DiVirgilio reimburse the Town of Dedham \$825 for the payment made to John's Autobody; and

(3) that DiVirgilio pay to the Commission the sum of \$1,000 as a civil penalty for violating G.L. c. 268A, §23(b)(2) by purchasing diesel fuel for the DPW from the Prevett Oil Company without following proper bidding procedures while, at the same time, he had a private social relationship with the owner of Prevett Oil; and

(4) that DiVirgilio pay to the Commission a sum of \$500 as a civil penalty for violating G.L. c. 268A, §23(b)(2) by allowing the Struzziery Construction Company the private use of the DPW cement mixer; and

(5) that DiVirgilio waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: April 29, 1993